IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Tr.P(Crl.).No. 5 of 2007()

CRA.226/2005 of ADDL. SESSIONS COURT (FAST TRACK) (ADHOC-I), KOTTAYAM
CRA.230/2005 OF III ADDL.SESSIONS COURT, KOTTAYAM

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PETITIONER:

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1. AFSAL HUSSAIN, S/O.ABOOBACKER,
   RESIDING AT DARUL SALAM, P.O.HAJIRAPPALLY,
   MALAPPUARAM.

2. E.ESSAKKUTTY, S/O.P.K.UMMARKUTTY,
   SARA MANZIL, MATTANNOOR, KANNUR.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS:

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1. K.S.MUHAMMED ISMAIL, S/O.SAYED MUHAMMED,
   KOCHUTHUNDIYIL, PARATHODE P.O.,
   KOTTAYAM DISTRICT.

2. STATE OF KERALA, REPRESENTED
   BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Tr.P.(Cr.) NO.5 OF 2007

Dated this the 18th day of January, 2007.

ORDER

This petition is for transfer of an appeal pending before one Bench of the Sessions Court of Kottayam to another Bench where a connected appeal against the same judgment is pending. Altogether there were five accused persons. All of them were found guilty, convicted and sentenced. Four of the convicted persons have preferred two separate appeals before the appellate court. The short request of the petitioners is that both appeals may be directed to be disposed of by the same Bench as it is the same common judgment which is appealed against in these two appeals.

2. The request of the petitioners appears to be most reasonable and justified. Any court which comes to know that an appeal against the same judgment though by others is pending before another court, must necessarily take steps to ensure that all the appeals against the same judgment are disposed of by the same Bench. The petitioners can bring it to the notice of the court before which one those appeals is pending. That Bench of the Sessions Court must certainly address the learned Sessions

Judge to invoke the powers under Section 409 Cr.P.C. In the alternative, the petitioners can certainly request the Sessions Court for transfer of the case pending before one Bench of the Sessions Court to the other Bench before which the other appeal is pending. The position has been made absolutely clear in the decision reported in **Surendrakumar v. Vijayan** [2005 (4) KLT 475].

3. In the light of that decision, it is absolutely clear that this Court cannot entertain this application for transfer under Section 407 Cr.P.C in the light of the proviso to Section 407(2) Cr.P.C. This Transfer Petition is, in these circumstances, dismissed, but with the above observations.

4. The learned counsel for the petitioners submits that one of the appeals is posted peremptorily for hearing before one Bench tomorrow - 19.01.2007. The petitioners can point out that Court the pendency of the appeal before the other Bench. The petitioners can alternatively request the Sessions Judge under Section 409 Cr.P.C to pass necessary orders.

5. Hand over a copy of this order to the learned counsel for the petitioners today itself.

R.BASANT
JUDGE

rtr/